TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~408.~~ 195

SAMUEL G. WHEELER, JR., APPELLANT,

vs.

GEORGE HARRIS, WILLIAM HARRIS, AND ANDREW J. HOWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 14, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 403.

SAMUEL G. WHEELER, JR., APPELLANT,

vs.

GEORGE HARRIS, WILLIAM HARRIS, AND ANDREW J. HOWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 78 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George Harris, William W. Harris, & Andrew J. Howell, libellants & appellees, against Samuel G. Wheeler & Starbuck, cl'm'ts & appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 8th day of Dec'r, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5 cts. int. rev. stamp affixed and canceled.]

1 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of George Harris, William W. Harris, and Andrew J. Howell, composing the firm of Harris & Howell against Samnel G. Wheeler and Starbuck, owners of the steamer "Eutaw," her engine, tackle, apparel, &c., respectfully shows:

First. That this is an action founded upon contract, civil and maritime, and said defendants reside in this district and have goods and chattels, credits and effects therein.

Second. That in the months of November & December, 1866, the said steamer Eutaw then, and still, belonging to the port and State of New York, and owned by the defendants, merchants, resident therein, was in the port of Wilmington, North Carolina, in need of supplies and repairs, advances, and necessaries for her voyage and employment in which she was then employed, to wit, in the coasting trade of the United States between the different States thereof; that the master of the vessel applied to the libellants to make such repairs, supplies and advances, and perform labor and service therefor; that in pursuance thereof the said libellants did make advances to said vessel, and furnish supplies and repairs thereto, and perform service, on which there is
2 now due the libellants the sum of four thousand dollars over and above all just deductions.

Third. That the said supplies, materials, advances, repairs, and services, were fit and proper, and necessary to render said vessel seaworthy, and to perform her intended voyage, and earn freight, and were due, advanced, and performed on the credit of said vessel, as well as of the master and owners.

Fourth. That payment has been demanded and refused.

Fifth. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore the libellants pray for process against said defendants with clause of foreign attachment, and that the court would be pleased to pronounce for the claims of the libellants aforesaid, and costs, or for such other relief to the libellants in the premises as may be just.

W. W. HARRIS.

Sworn to before me this 9 day of March, 1867.

O. R. STEELE,
Notary Public.

BEEBE, DEAN & DONOHUE, *for Libellant.*

3 (Endorsed:) 20—548. U. S. district court. George Harris & al. vs. Samuel G. Wheeler, & al. Starbuck, libel. Beebe, Dean & Donohue, for libellant.

Let process, with a clause of foreign attachment, issue against the within-named respondents, pursuant to the prayer of the libel herein.
N. Y., March 9, 1867.

SAM'L R. BETTS.

Filed March 9, 1867.

4

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 9 day of March, 1867.

5 District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the ninth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, by George Harris & others, against Samuel G. Wheeler & Starbuck, owners of the steamer "Eutaw," her engines, &c., for the reason and causes in the said libel mentioned, and praying that process, with a clause of foreign attachment, may issue against the said respondents; and the said libellants, and Charles Donohue surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of one hundred dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of one hundred dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

B. B. HARRIS.
C. DONOHUE.

Taken and acknowledged this 9th day of March, 1867, before me,
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles Donohue, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of two hundred dollars, over and above all his just debts and liabilities.

C. DONOHUE.

Sworn to, this 9th day of March, 1867, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 9th day of March, 1867.

6 G. F. B., *Clerk.*

7 [SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America for the southern district of New York, on the ninth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, by George Harris & al. against Samuel G. Wheeler and Starbuck, owners of the steamer "Eutaw," her engine, tackle, &c., action civil maritime, for repairs, materials, supplies, and advances thereon, alleged to be due and owing to the said libellants, amounting to four thousand dollars, and praying that a citation may issue against the said respondent, with clause of foreign attachment, pursuant to the rules and practice of this court. Now, therefore, we do hereby empower and strictly charge and command you the said marshal that you cite and admonish the said respondents, if they shall be found in your district, that they be and appear before the said district court on the twelfth day of March instant, at the United States court rooms, in the city of New York, then and there to answer the said libel and to make their allegation in that behalf; and if the said respondents cannot be found, that you attach their goods and chattels to the amount sued for, and if such property cannot be found that you attach their
8 credits and effects to the amount sued for, in the hands of their garnishee, and have you then and there this writ, with your return thereon.

Witness the Hon. Samuel R. Betts, judge of said court, this ninth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-first.

GEO. F. BETTS, *Clerk.*

BEEBE, DEAN & DONOHUE, *Proctors Lib't.*

50-c. int. rev. stamp cancelled.]

(Endorsed:) Vol. 20, No. 548. United States district court. George Harris & al. vs. Samuel G. Wheeler & Starbuck, owners of steamer Eutaw. Process in personam, with clause of foreign attachment per curiam. Returnable March 12, 1867. Beebe, Dean & Donohue, proctors for libellant. Filed March 12, 1867.

I hereby depute M. T. Harris to execute the within process.
Dated March 9, 1867.

R. MURRAY,
U. S. Marshal.

Respondents not found; attached their right, title, and interest in the steamer "Eutaw," this 9th day of March, 1867.

R. MURRAY,
U. S. Marshal.

9 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of Samuel G. Wheeler, jr., impleaded with Starbuck to the libel and complaint of George Harris, William W. Harris, and Andrew J. Howell, respectfully shows as follows:

First. That this respondent denies the allegations in the first article of the complaint of the libellants, except that he resides in, and has goods, chattels, credits, and effects in, this district.

Second. That as to the matters stated in the second and third articles

of said libel and complaint, this respondent has no knowledge, and therefore denies each and every allegation in the same, except that the steamer Eutaw, belonging to the port of New York and was at the port of Wilmington, North Carolina, in the months of November and December, 1866.

Third. That this respondent denies the matters contained in the fourth and fifth articles of said complaint.

Fourth. That at the times stated in said complaint libel, this respondent was sole owner of the steamer Eutaw, and that Starbuck, made a party to this suit, was in no way concerned in the care or management of said steamer.

10 Fifth. That all and singular the premises are true.

Wherefore respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid and condemn the libellants with costs, and such other and further decree make as to law and justice appertain.

S. G. WHEELER, JR.

Sworn to before me this 24 day of April, 1867.

EDWIN F. CORRY, JR.,
Notary Public, City of New York.

(Endorsed:) U. S. district court. George Harris & al. vs. Samuel G. Wheeler, impl'd. Answer. L. B. Bunnell, proctor for resp't; H. F. Buckley, advocate. Filed April 24, 1867.

11 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 20th day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. WHEELER ET AL. } 20—548.

Ordered, That this cause be referred to Geo. F. Betts, esqr., U. S. commissioner, to ascertain and report the amount due libellants. The same proof of the payment and propriety of payment of bills to be made as if before the court.

(Endorsed:) Vol. 20, No. 548. United States district court for the southern district of New York. George Harris & al. vs. Samuel G. Wheeler & al. Order ref'ce to Geo. F. Betts, U. S. comm'r. Filed the 20th day of Jan'y, 1868.

12

13 U. S. district court.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMP'LD. } 20—348.

S. B. Burnell for respondents; C. Donohue for libellants.
Ref. to hear and determine.

1868, FEB. 4.—Parties present. Adj'd to the 5th inst., 12 m.

FEB'Y 5.—Parties appear and assent to these bills:

Entering & clearance	$1	00
Do. changing &c. cargo	166	25
Harbor-master's fees	2	00
Advance on B. L.	52	00
Do.	170	48
Cash paid Capt. Hazard	440	00
" " steward	5	00
Survey on cargo	5	00
Wood	8	87
Machinery work	1	50
Discharges of crew	747	66
Passage to N. Y	180	00
Mending glass		50
Bond	17	50
Clearance after tow	5	00
Bill pilotage	4	00
Cooperage, inward cargo	12	50
14 Stamps on freight bills	1	00
1½ gall. Boston oil	1	25
Pilotage in, &c.	45	75
Reff'r bill	226	30

Adjourned to 10th, 12 m.

FEB'Y 10.—Respondents further admit—

Freight on propeller	80	85
Hart & Burly	336	70
Cassidy & Bergh	2,010	25
Meats & poultry	120	17

Adj'd to 24, 10 o'clock, in.

FEB. 24.—Mr. Donohue read in evidence the deposition of James E. Davis. Adj'd to to 28th, 12 o'clock, m.

APRIL, 1868.—Libellants put in—

Deposition of Robert Henning, Ex. No. 1, A.
" " do " No. 2, A.
" " George Harris, No. 3.
Deposition " H. Lemensman, No. 4.
" " J. H. Neff, No. 5.
" " James G. Davis, " 6.
" " Hart & Bailey, " 9.
" " Geo. Harris, " 7, and
Deposition No. 8, put in evidence, subject to the further examination of the witnesses named therein.

15 Ex. 1 and Ex. 2, read in evidence, subject to all objections. Adj'd to 28th inst., at 10 a. m.

APRIL 28.—Libellant reads in evidence—

Depositions of Wilkes Morris.
" " Joseph H. Neff.
" " E. Murray.
" " W'm B. Flarmer.
" " A. J. De Rossett.
" " A. Martin.

Respondent reads in evidence deposition of N. G. Darnel.
Adjourned to May 2, 1 p. m.

MAY 2D.—Case closed.
Mr. Donohue claims—

Amount of debt	$3,789 93
Interest	351 01
	$4,140 94

(Endorsed:) U. S. district court. George Harris & al. vs. Samuel G. Wheeler, impl'd, &c. Min't on ref'ce.

16

17 STATE OF NORTH CAROLINA,
County of New Hanover:

I, William H. Harris, notary public, duly commissioned and qualified, on this 22d day of February, A. D. 1868, proceed to take the deposition of James G. Davis, resident of the city of Wilmington, State of North Carolina, to be read in evidence in a cause now pending in the United States district court for the southern district of New York, in the second circuit, wherein George Harris et al. are plaintiffs, and Samuel G. Wheeler, jr., is defendant.

The said James G. Davis, being sworn according to law, deposeth and says as follows:

Int. 1st. Are you acquainted with the parties plaintiff in this suit? If so, state who they are, and what connection you now have, or have had with them.

Ans. I am acquainted with the parties plaintiff in this suit, and have been employed by them for the last three years as cashier and confidential book-keeper.

Int. 2nd. Will you state if you were acting as cashier and book-keeper for the plaintiffs, when the steamer "Eutaw" was in the port of Wilmington, in the latter part of the year 1866, and if you
18 know whether the said plaintiffs were the consignees of the said steamer, and had any dealings and transactions with Oliver P. Hazard, captain of said steamer, and if the said plaintiffs paid any bills for said steamer, and at whose request and instance were the said bills paid?

Ans. When the said steamship Eutaw was in the port of Wilmington, in the latter part of the year 1866, I was acting as cashier and book-keeper for the plaintiffs. The steamship Eutaw came consigned to the plaintiff, and I knew a large amount of monies expended for and on account of said steamer, and at the request of her said captain.

Int. 3rd. Will you look at the exhibits now produced, and shown to you, marked with the letters A & B, and state whether said exhibits contain a correct account of the dealings of the said plaintiffs with the steamship Eutaw and owners.

Ans. I have examined carefully the exhibits of A & B, here produced, and know that they contain a correct account of the transactions of the plaintiffs with the steamship Eutaw and owners.

19 Int. 4. Will you state if you have a clear, full, and distinct recollection of the various items in the exhibit here produced,

marked A; if so, state whence the following items, viz: to entrance & clearance, $1 20; telegraph, $32 30; towing from stream to wharf, $8; discharging cargo, $127 36; noting and extending protest, $15 30; watchman on cargo, $118 50; wharfage, landing, and reshiping cargo, $210 50; loading and storing cargo, $180 47; pilotage down and out, $61 50; storage on cargo, $382 84; wharfage on vessel, $197 50; lighterage on propeller, $76 50; mooring in harbor, $10; horse hire, discharging, and loading, $92 50; lighterage on cargo to steamship Santee, $26 64; cooperage on cargo, $84 65; Cassidy and Berry bill, taking on steamer on railway, $2,010 25; if so, will you state whether those items are correct, and if you know that the money was paid by plaintiff for the several items above set forth, and by whose order was this money so paid?

Ans. I know the items all to be correct; as cashier of the plaintiffs, I paid the money myself to the different persons to whom it was
20 due, and that all of these payments was made at the instance and request of the said captain of the said steamer.

Int. 5. Will you please state if the commissioners, as charged in this bill, are the proper commissioners, according to the customs and usage of this port?

Ans. They are.

Int. 6. Will you state if you have a clear, full, and distinct recollection of the various items in the exhibit here produced, marked "B;" if so, whether the following items, viz: lighterage on 20 bales cotton, $4; telegraphs, $5 60; inspection on night work, $10; attorneys fees, $10; watchman on cargo, $30; lighterage on cargo over the river, $24 64; inspection on night work, $10; horse hire, $60; advertising twice, $30; expenses receiving cargo, $14 50; if so, will you state whether those items are correct, and if you know that the money was paid by plaintiffs, for the several items above set forth, and by whose order was this money so paid.

Ans. I know the items all to be correct; as cashier of the plaintiff I paid the money myself to the different persons to whom it was
21 due, and that all of these payments were made at the instance and request of the said captain of the said steamer.

Int. 7. Will you please state if the commissioners, as charged in this bill, are the proper commissioners, according to the custom and usage of this port?

Ans. They are.

Int. 8. Will you please state, if you know, what amount of money was received by the plaintiff for freight upon the steamer "Eutaw?"

Ans. The plaintiffs received the sum of $1,083 47, the amount credited on the bill marked "B." The actual amount of freight was $1,166 47; but one of the consignees of the cargo, George R. French & Son, retained and refused to pay $83 for goods that were short, alleging that the goods were taken from the boxes while on board the steamer.

JAMES G. DAVIS.

Sworn and subscribed before me.
[SEAL.]

W'M M. HARRISS,
Notary Public.

I, W'm M. Harriss, notary public as aforesaid, do certify that
22 James G. Davis, the witness above examined, lives at a greater distance than one hundred miles from the city of New York, the place where the said trial is depending, to wit, in the city of Wilmington, State of North Carolina, and that the said Samuel G. Wheeler, jr.,

the respondent in the above cause, does not reside within one hundred miles of the place of such caption, and that the said Samuel G. Wheeler, jr., has no attorney or agent within one hundred miles of the place, to wit, the city of Wilmington, the taking of this deposition.

And I further certify that I shall seal up the said deposition and direct it to the proper court, and forward it by mail.

W'M M. HARRISS,
Not. Pub.

23 *Steamship Eutaw & owners to Harriss & Howell,* DR.

To entrance & clearance		1 00	
" discharging, loading, & stowing cargo		166 25	
" paid Captain Hazard		440 00	
" " harbor-master's fees		2 00	
" " lighterage on 20 b's cotton		4 00	
" telegraphs		5 60	
" paid steward		5 00	
expenses b's lading	52 00		
" " "	170 48		
		222 48	
" survey on cargo		5 00	
" inspection on night work		10 00	
" wood		8 87	
" machinery work		1 50	
" paid discharge of crew		747 66	
" " passage to New York		180 00	
" attorney's fees		10 00	
" watchman on cargo		30 00	
" mending glass		50	
" bread bill		17 50	
" bill meats & poultry		120 17	
" clearance after hours		5 00	
" lighterage on cargo over river		24 64	
" inspectors on night work		10 00	
" 1 bbl. of potatoes		4 00	
" horse hire		60 00	
" advertizing twice		30 00	
" shipping seamen		30 00	
24 To expenses receiving cargo		14 50	
" cooperage on inward cargo		12 50	
" stamps on freight bills		1 00	
" 1½ gallons oil		1 25	
" pilotage in & up		45 75	
J. H. Neff's bill—stores		226 30	
		2,442 47	
Commissions on—			
In f't..... 1,115 88			
Charges .. 50 59			
	$1,166 47—2½ °/₀ ...	29 16	
Outward.....	1,634 82—3 °/₀	81 74	
		110 90	
On bills .. 2,442 47			
Less fr't .. 1,166 47			
	$1,276 00—5 °/₀	63 80	
			2,617 17

To amount disbursements		2,617 17	
By freight	1,166 47		
Less G. R. French & & Son short goods	83 00		
			1,083 47
By balance due			1,533 70
		2,617 17	2,617 17

E. E. Wilmington, N. C., Dec. 5, 1866.
(Signed) HARRIS & HOWELL,
P'r DAVIS.

25 *To whom it may concern to Harris & Howell,* DR.

To entrance & clearance	1 20	
" telegraphs	32 30	
" towing from stream to wharf	8 00	
" discharging cargo	127 36	
" noting & extending protest	15 30	
" watchman on cargo	118 50	
" freight on 1 propeller	80 85	
" wharfage, landing, & reshipping cargo	210 50	
" loading & storing cargo	180 47	
" pilotage down & out	61 50	
" storage on cargo	382 84	
" wharfage on vessel	197 50	
" lighterage on propeller	76 50	
" mooring in harbor	10 00	
" horse hire, discharging & unloading	92 50	
" lighterage on cargo to S. S. Santee	26 47	
" cooperage on cargo	84 65	
" Hart & Bailey bill, repairs & work fitting propeller	336 70	
" bill Cassidy & Berry, *bill* taking on marine railway	2,010 25	
	4,053 56	
Commission on bills, $4,053 56—5 %	202 67	
Do. " value cargo, $40,000—2½ %	1,000 00	
		5,256 23
Negotiating draft		131 40
		5,387 63

E. E. Wilmington, N. C., Dec. 5, '66.
(Signed) HARRISS & HOWELL,
Per DAVIS.

26

27 WILMINGTON, N. C., 28 *March*, 1868.

I hereby certify that I received from Messrs. Harris & Howell one hundred and ninety-seven $\frac{50}{100}$ dollars for wharfage on steamer "Eutaw," in November, 1866.

ROBERT HENNING,
Agent.

Sworn to before me this 28th March, 1868.
[SEAL.] W. M. HARRIS,
Not. Pub.

No. 1 A.—G. F. B.

Steamer Eutaw & owners to Cassidy & Berry.

For taking stern on marine railway to examine propeller, 491 tons, @ 50c	$245 50
" taking on marine railway whole length of vessel to put on new propeller, per contract	500 00
6 lay days, @ 25c per ton per day	736 50
material & labor furnished	528 25
	$2,010 25

Wilmington, N. C. No. 2 A.—G. F. B.
Received payment for Messrs. Harris & Howell,
CASSIDY & BERRY,
Per R. HENING.

WILMINGTON, N. C., *March* 28, 1868.

28 This is to certify that the within bill, say two thousand ten and $\frac{25}{100}$ dollars, ($2,010 25,) was paid to me as book-keeper for Cassidy and Berry, said bill being correct. One of the firm, (Mr. Cassidy,) having died, the other, (Mr. Berry,) being absent, cannot sign the firm's name; but the money was received by me as their book-keeper.
ROBERT HENING.

Sworn to before me this 28 March, 1868.
[SEAL.] W'M M. HARRIS,
Not. Pub.

This is to certify that I received from Harris & Howell two hundred ten and $\frac{50}{100}$ dollars for wharfage, landing, and shipping of cargo steamer "Eutaw," and three hundred eighty-two and $\frac{84}{100}$ dollars for storage on said cargo, both amounts paid to me in December, 1866.
GO. HARRIS,
Trustee.

Sworn to before me this 28 March, 1868.
[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

No. 3.—G. F. B.

29 WILMINGTON, N. C., *March* 28, 1868.

This is to certify that we received from Harris & Howell, as agents or consignees for steamship Eutaw & owners, the sum of seventy-six and $\frac{50}{100}$ dollars, (76 $\frac{50}{100}$,) the same being for lighterage, labor, (and all other expenses,) on propeller from steamship "Commander to said steamship Eutaw," in the month of November, 1866. Our books being misplaced, cannot give the exact date, but the amount is correct.
H. LEMENSMAN & CO.

Sworn to before me this 28th March, 1868.
[SEAL.] W'M M. HARRIS,
Not. Pub.

No. 4.—G. F. B.

30 WILMINGTON, N. C., *Dec.* 1, 1866.

Steamship Eutaw & owners bought of Joseph H. Neff, dealer in naval stores, ship chandlery, ship stores, groceries, hardware, oakum, oars, boat paints, oil, &c., corner of Dock & Water streets.

Oct. 17.	To 35½	lbs.	red lead, 25, 8 87; 5 gals. boiled oil, 2 25, 11 25	20 12
"	1	"	vermillion, 1; keg white lead, 25 lbs., 5	6 00
"	20	"	butter, 40, 8; 2 bot's ex. lemon, 1 00	9 00
"	30	"	do 60, 18; 5 bbls. I. potatoes, 20 00	38 00
"	40	"	sugar, 18, 7 20; 1 " turnips, 3 50	10 70
"	30	"	white do., 20, 6; 1 " onions, 4 00	10 00
"	1	"	black pepper, .75; 1 bbl. flour, 15 00	15 75
"	3	"	black tea, 6 00; 1 " mess pork, 30 00	36 00
"	2	"	green tea, 4 00; 28 lbs. coffee, 35, 9 80	13 80
"	35	"	codfish, 10, 5 50; 1 doz. cans pie fruit, 9 00	14 50
"	1	doz.	yeast powder, 6 00; 10 " eggs, 50, 5 00	11 00
"	2	lbs.	sperm candles, 1 20; 5 gals. signal oil, 15 00	16 20
"	2	gals.	molasses, 1 50; 10 bars soap, 40, 4 00	5 50
"	26	lbs.	rice, .18, 4 68; ½ bushel hominy, .75	5 43
"	1	doz.	cans milk, 6 00; ½ gross matches, 2 00	8 00
"	2	bot's	horse radish, 1 00; 2 ball wicking, .30	1 30
"	2		pumpkins, 1 00; 6 cab'ages, 2 00	3 00
"	1		can, 2 00	2 05

Received payment of Messrs. Harris & Howell.

JOS. H. McNEFF.

DEC. 4TH, 1866.

31 WILMINGTON, N. C., *March* 28, 1868.

I do hereby certify that the above bill is a correct and true copy of the original, paid to me by Harris & Howell, as agents or consignees for steamship "Eutaw" & owners.

JOS. H. McNEFF.

Sworn to before me this 28th day of March, 1868.

[SEAL NOT.] W'M. M. HARRIS,
Not. Pub.

No. 5.—G. F. B.

This is to certify that the stevedore's bill amounting to four hundred twenty-two and $\frac{75}{100}$ dollars, and watchman's bill amounting to one hundred forty-eight and $\frac{50}{100}$ dollars, charged by Harris & Howell in their accounts against the steamship Eutaw and owners, dated Dec'r 5th, 1866, was paid by me as cashier for said Harris & Howell. I further certify that the stevedore who discharged and loaded the vessel is absent from the place, as also is the watchman, which prevents obtaining their vouchers; and, I further certify that the said steamer
32 "Eutaw" was compelled to discharge her cargo after being ready for sea, in consequence of damage sustained, and that after making necessary repairs she was reloaded and proceeded on her voyage.

Witness hereof I hereunto set my hand this 28th day of March, 1868.

JAMES G. DAVIS.

Sworn to before me this 28 March, 1868.

[SEAL.] W'M M. HARRIS,
Not. Pub.

No. 6.—G. F. B.

I hereby certify that the valuation of forty thousand dollars upon the cargo of the steamer "Eutaw" in December, 1866, which said steamer had on board at the time she sustained damage in this port, which necessitated her discharging for repairs, was made by me at the fair market value at the time.

In witness whereof I have hereunto set my hand.

Wilmington, N. C., March 28, 1868.

GEO. HARRIS.

Sworn to before me this 28th March, 1868.

[NOT. PUB. SEAL.] W'M M. HARRIS,
Not. Pub.

No. 7.—G. F. B.

33 We, the undersigned, commission merchants of the city of Wilmington, North Carolina, do hereby certify that in the month of December, 1866, and prior to that time, it was the custom of the merchants of this place in cases where vessels were so badly injured or damaged in such manner as to necessitate the discharging of their cargo for repairs, to make a charge of two and one half per cent. upon the value of such cargo, as compensation for services as custodian, and for the general supervision of the same.

In witness whereof we hereunto set our hands this 28th day of March, 1868.

CROWLEY & MORRIS.
E. MURRAY & CO.
JA'S H. NEFF.
W'M B. FLANNER.
ATKINSON SHEPPERSON.

Sworn to before me this 28 March, 1868.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

No. 8.—G. F. B.

Steamship "Eutaw" & owners to Hart & Bailey.

1866.			
Oct. 16	To 1½-in. sett-screw		25
" "	" 1 hook		25
	40 lbs. wro't-iron rivits for rudder post		5 00
	31 " cast-steel keys, 50		15 00
34	To 28 lbs. sheet copper, 75		21 00
	" 4 " nails		2 40
	" 280 hours machinist boring keys, and fitting up propeller, &c		168 00
	" coppersmith's work on stern		7 50
	" 150 hours helpers, taking off & boring & fitting propeller rudder		45 00
	" 71 hours blacksmith forging rudder-post rivits, keys, &c		56 80
	" tools lost overboard		10 00
	" drayages		5 00
			336 70
1866.			
Nov. 24	Received from Harris & Howell, cash		336 70

WILMINGTON, N. C., *March* 28, 1868.

We do hereby certify that the above bill is a true and correct copy of the original paid by Harris & Howell, as agents or consignees of steamship "Eutaw" & owners.

HART & BAILEY.

Sworn to before me this 28th day of March, 1868.
[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

No. 9.—G. F. B.

35 *Steamship "Eutaw" & owners to Harris & Howell.*

To	entrance & clearance		1 00
"	discharging, loading, & storing cargo		166 25
"	paid Captain Hazard		2 00
"	lighterage on 20 b's cotton		4 00
"	telegraphs		5 60
"	paid steward		5 00
"	expenses b's lading	52 00	
"	" "	170 48	
			222 48
"	survey on cargo		5 00
"	inspection on night work		10 00
"	wood		8 87
"	machinery work		1 50
"	paid discharge of crew		747 66
"	" passage to New York		180 00
"	attorney's fees		10 00
"	watchman on cargo		30 00
"	mending glass		50
"	bread bill		17 50
"	bill meats & poultry		120 17
"	clearance after hours		5 00
"	lighterage on cargo over river		24 64
"	inspectors on night work		10 00
Paid	1 bbl. potatoes		4 00
"	horse hire		60 00
"	advertising twice		30 00
"	shipping seamen		30 00
"	expenses receiving cargo		14 50
"	cooperage on inward cargo		12 50
36 "	stamps on freight bills		1 00
"	1½ gallon oil		1 25
"	pilotage in and up		45 75
No. 5 "	J. H. Neff, bill of stores		226 30
			2,442 47

Commission on—			
In freight	1,115 88		
Charges	50 59		
	1,166 47 ; [47] $2\frac{1}{2}$%	29 16	
Outward do.	1,634 82 ; 5%	81 74	
			110 90

On bills, 2,442 47			
Less freight, 1,166 47			
	1,276 00; 5%	63 80	
To am't disbursements		2,617 17	2,617 17
By " freight	$1,166 47		
Less G. R. French & Co., short goods	83 00		
			1,083 47
By balance due			1,533 70
		2,617 17	2,617 17

E. E. Wilmington, N. C., Dec. 5, 1866.

HARRISS & HOWELL,
Per DAVIS.

37 *Steamship " Eutaw" & owners, underwriters, and whom it may concern, to Harris & Howell, Dr.*

	To entrance & clearance	1 20	
	" telegraphs	32 30	
	" towing from stream to wharf	8 00	
	" discharging cargo	127 36	
	" noting & extending protest	15 30	
	" watchman on cargo	118 50	
	" freight on propeller	80 85	
No. 3.	" wharfage, landing & reship	210 50	
	" landing & storing cargo	180 47	
	" pilotage down and out	61 50	
No. 3.	" storage on cargo	382 81	
No. 1. A.	" wharfage on vessel	197 50	
No. 4.	" lighterage on propeller	76 50	
	" towing in harbor	10 00	
	" horse hire discharging & loading	92 50	
	lighterage on cargo to S. S. Santee	26 64	
	cooperage on cargo	84 65	
No. 9.	Hart & Bailey, bill repairs & work fitting propeller	336 70	
	Cassidy & Berry, bill taking on marine railway	2,010 25	
		$4,053 56	
	Commissioner's bills—		
	4,053 56; 5 %	202 67	
7 deps. & No. 788.	Dr. " value cargo 40,000; 2½ %	1,000 00	
			5,256 23
	Negotiating draft 2½ %		131 40
			5,387 63

38 E. E. Wilmington, N. C., Dec. 5, '66.

HARRIS & HOWELL,
Per DAVIS.

39 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMPLEADED.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of Wilkes Morris, one of the firm of Crowley & Morris, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. Wilkes Morris; thirty years old; auctioneer; and reside in the city of Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long you have been so.

Ans. Six years.

Int. 3. Do you know the parties hereto, or either of them; and if either, which?

Ans. I know the libellants in the above suit.

Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the landing, storage, and reshipping of cargo, where a vessel is in distress, or com-
40 pelled to land and reship cargo, the person to be compensated being appointed or acting for that purpose, and receiving no other compensation? If you know of any such usage or custom as to such compensation please state what it was in December, A. D. 1866.

Ans. The customary commission has always been two and a half per cent.

WILKES MORRIS.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants, but not on behalf of respondent, who does not reside within one hundred miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

41 U. S. district court.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. *Harris*, IMPLEADED.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of Joseph H. Neff, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. Joseph H. Neff; thirty-six years of age; commission merchant, Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long you have been so.

Ans. Eighteen years.

On bills, 2,442 47			
Less freight, 1,166 47			
1,276 00; 5%.....		63 80	
To am't disbursements.....		2,617 17	2,617 17
By " freight	$1,166 47		
Less G. R. French & Co., short goods	83 00		
			1,083 47
By balance due			1,533 70
		2,617 17	2,617 17

E. E. Wilmington, N. C., Dec. 5, 1866.

HARRISS & HOWELL,
Per DAVIS.

37 *Steamship " Eutaw" & owners, underwriters, and whom it may concern, to Harris & Howell, Dr.*

	To entrance & clearance.....	1 20	
	" telegraphs	32 30	
	" towing from stream to wharf	8 00	
	" discharging cargo	127 36	
	" noting & extending protest.....	15 30	
	" watchman on cargo.....	118 50	
	" freight on propeller.....	80 85	
No. 3.	" wharfage, landing & reship	210 50	
	" landing & storing cargo.....	180 47	
	" pilotage down and out.....	61 50	
No. 3.	" storage on cargo.....	382 81	
No. 1. A.	" wharfage on vessel.....	197 50	
No. 4.	" lighterage on propeller.....	76 50	
	" towing in harbor	10 00	
	" horse hire discharging & loading..	92 50	
	lighterage on cargo to S. S. Santee..	26 64	
	cooperage on cargo.....	84 65	
No. 9.	Hart & Bailey, bill repairs & work fitting propeller.....	336 70	
	Cassidy & Berry, bill taking on marine railway.....	2,010 25	
		$4,053 56	
	Commissioner's bills—		
	4,053 56; 5 %.....	202 67	
7 deps. & No. 788.	Dr. " value cargo 40,000; 2½ %.....	1,000 00	
			5,256 23
	Negotiating draft 2½ %.....		131 40
			5,387 63

38 E. E. Wilmington, N. C., Dec. 5, '66.

HARRIS & HOWELL,
Per DAVIS.

39 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMPLEADED.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of Wilkes Morris, one of the firm of Crowley & Morris, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. Wilkes Morris; thirty years old; auctioneer; and reside in the city of Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long you have been so.

Ans. Six years.

Int. 3. Do you know the parties hereto, or either of them; and if either, which?

Ans. I know the libellants in the above suit.

Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the landing, storage, and reshipping of cargo, where a vessel is in distress, or com-
40 pelled to land and reship cargo, the person to be compensated being appointed or acting for that purpose, and receiving no other compensation? If you know of any such usage or custom as to such compensation please state what it was in December, A. D. 1866.

Ans. The customary commission has always been two and a half per cent.

WILKES MORRIS.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants, but not on behalf of respondent, who does not reside within one hundred miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

41 U. S. district court.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. *Harris*, IMPLEADED.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of Joseph H. Neff, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. Joseph H. Neff; thirty-six years of age; commission merchant, Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long you have been so.

Ans. Eighteen years.

Int. 3. Do you know the parties hereto, or either of them; and if either, which?

Ans. I am acquainted with Geo. Harris, W'm M. Harris, and Andrew J. Howell, libellants in this suit.

42 Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the landing of storage and reshipping of cargo where a vessel is in distress, or compelled to land and reship cargo, the person to be compensated being appointed, or acting for that purpose, and receiving no other compensation? If you know of any such usage or custom as to such compensation, please state what it was in December, A. D. 1866.

Ans. Two and one-half per cent. commission on value of cargo.

JOS. H. NEFF.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants, but not on behalf of respondent, who does not reside within one hundred miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

43 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMPLEADED.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of E. Murray, (one of the firm of E. Murray & Co.,) of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. Eli Murray; forty-six years; commission merchant; Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, state how long you have been so.

Ans. Fifteen years.

Int. 3. Do you know the parties hereto or either of them; and if either, which?

Ans. Yes. I know Geo. Harriss and William M. Harris, and Andrew J. Howell, libellants in this suit.

44 Int. 4. Do you know of any custom in Wilmington in regard to the compensation to the merchant taking charge thereof on the landing, storage, and reshipping of cargo where a vessel is in distress or compelled to land or reship cargo, the person to be compensated being appointed or acting for that purpose, and receiving no other compensation? If you know of any such usage or custom as to such compensation, please state what it was in December, 1866.

Ans. The compensation allowed in such cases as the usual commission is from two and one-half to five per cent.

E. MURRAY.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants, but not in behalf of *of* respondent, who does not reside within one hundred miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

45 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMPLE'D.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of W'm B. Flanner, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?

Ans. W'm B. Flanner; forty-six years; merchant, Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long you have been so.

Ans. Twenty-five years.

Int. 3. Do you know the parties hereto, or either of them; and if either, which?

Ans. I know the plaintiff.

Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the land-
46 ing, storage, and reshipping of cargo where a vessel is in distress or compelled to land and reship cargo, the person to be compensated being appointed or acting for that purpose and receiving no other compensation? If you know of any such usage or custom as to such compensation, please state what it was in December, A. D. 1866.

Ans. The custom as to compensation in this matter is now, and has always been, to charge a commission of two and one-half per cent. on value of cargo.

W'M B. FLANNER.

The deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants, but not on behalf of respondent, who does not reside within 100 miles of the place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

47 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER IMPLD'D.

DISTRICT OF NORTH CAROLINA,
United States of America, ss:

Deposition of A. S. DeRossett, (one of the firm of DeRossett & Co.,) of Wilmington, North Carolina, a witness produced and sworn before me on behalf of the libellants.

Int. 1. What is your name, age, and occupation, and place of business?
Ans. Armand J. DeRossett; sixty years of age; commission merchant; Wilmington, North Carolina.
Int. 2. If you answer that you are a merchant, or in business in Wilmington, then state how long have you been so?
Ans. Thirty years.
Int. 3. Do you know the parties hereto or either of them, and if either, which?
Ans. I know Geo. Harris, Mr. W. Harris, and Andrew J. Howell, libellants in this suit.
48 Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the landing, storage, & reshipping of cargo where a vessel is in distress or compelled to land and reship cargo, the person compensated being appointed or acting for that purpose and receiving no other compensation? If you know of any such usage or custom as to such compensation, please state what it wasin December, A. D. 1866.
Ans. I have always understood the customary charge to be two and one-half per cent. on the valuation of the goods.

A. J. DEROSSETT.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellants but not in behalf of respondent, who does not reside within 100 miles of place of caption, and had no agent or attorney residing there.
[NOT. SEAL.]

49 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER.

DISTRICT OF NORTH CAROLINA,
United States of America:

Deposition of A. Martin, of Wilmington, North Carolina, a witness produced and sworn before me on behalf of libellants.

Int. 1. What is your name, age, and occupation, and place of business?
Ans. Alfred Martin; fifty-six years of age; commission merchant, Wilmington, North Carolina.

Int. 2. If you answer that you are a merchant or in business in Wilmington, then state how long have you been so?

Ans. Twenty-five years.

Int. 3. Do you know the parties hereto or either of them, and if either, which?

Ans. I know Geo. Harris, W'm W. Harris, and Andrew J. Howell, libellants in this suit.

50 Int. 4. Do you know of any custom in Wilmington in regard to compensation to the merchant taking charge thereof on the landing, storage, and reshipping of cargo where a vessel is in distress or compelled to land and reship cargo, the person to be compensated being appointed or acting for that purpose and receiving no other compensation? If you know of any such usage or custom as to such compensation, please state what it was in December, A. D. 1866.

Ans. The custom has always been to charge a commission of two and one-half per cent. on the value of the goods taken charge of.

ALFRED MARTIN.

The above deposition was taken by me in due form under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellant but not in behalf of respondent, who does not reside within 100 miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W'M M. HARRIS,
Not. Pub.

51 U. S. district court.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER, IMPL'D.

DISTRICT OF NORTH CAROLINA,
United States of America, ss:

Deposition of W. G. Daniel, (one of the firm of North & Daniel, merchants,) of *W. Lin*ington, North Carolina, a witness produced and sworn before me & in behalf of defendants.

Int. 1. Do you know of any custom at the port of Wilmington regulating the compensation to be paid to consignees of vessels for the custody and reshipping of cargoes, where the same have been discharged for repairs to the ship? If yea, state the amount of said compensation.

Ans. Two and one-half per cent. commissions are allowed on value of cargo.

Int. 2. If you shall say that any compensation is customary, paid for the custody, &c., of said cargoes, state whether the custom is the
52 same when the vessel is found unable to leave the dock as when obliged to put back or in *in* distress.

Ans. Yes; it is the same.

Int. 3. State whether the custom is well established, and how long you have known it to exist.

Ans. I have been in business fifteen years and know nothing to the contrary.

N. G. DANIEL.

The above deposition was taken by me in due form, under the act of Congress, the reason being that the witness was material and necessary; that I was attended by counsel for libellant, but not in behalf of respondent, who does not reside within 100 miles of place of caption, and had no agent or attorney residing there.

[NOT. SEAL.] W. M. MARTIN,
Not. Pub.

53 District court of the United States for southern district of New York.

GEORGE HARRIS & AL.
vs.
SAMUEL G. WHEELER & AL. } 20—548. Commissioner's report.

In pursuance of a decretal order made in the above-entitled cause, on the 20th day of January, in the year of our Lord one thousand eight hundred and sixty-eight, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for advances, &c., as alleged in their libel, and to report thereon to this court with all convenient speed—

I, George F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellants, and for the respondents, and have taken and examined the testimony offered in support of the libellant's claim, and in opposition thereto, and do find that there is due to the libellants for their said advances the following amounts, viz:

Balance as per bill Ex. 1	2,256 23	
" " " " Ex. 2	1,533 70	
		3,789 93
Int. from Dec. 15, '66, to May 1, '68		351 01
Making in the total		$4,140 94

54 (the sum of four thousand one hundred & forty $\frac{94}{100}$ dollars.)

Dated the sixth day of May, A. D. 1868.

All which is respectfully submitted.

GEO. F. BETTS,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctors for Libellants.

(Endorsed:) Vol. 20, No. 548. United States district court for the southern district of New York. George Harris vs. Samuel G. Wheeler & al. Beebe, Dean & Donohue, proctor for libel't. Commission's report. Conf'n absolute. Filed the 9th day of May, 1868.

55 At a stated term of the district court of the United States of America for the southern district of New York, held at the city-hall, in the city of New York, on Saturday, the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

GEO. HARRIS ET AL.
vs.
SAMUEL G. WHEELER & AL. } 20—548.

Oh reading and filing the report of George F. Betts, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for advances, &c., as alleged in their libel, & interest thereon, the sum of four thousand one hundred & forty $\frac{94}{100}$ dollars, ($4,140 94.)

On motion of Beebe, Donohue & Cooke, proctors for the libellants, it is ordered that the report be in all things confirmed, and that the libellants recover in this action against the respondent Samuel G. Wheeler, the amount reported due, together with their costs to be taxed.

56 And on like motion, it is further ordered that a judgment be, and the same is hereby, entered against the said Samuel G. Wheeler, for the sum of four thousand one hundred and forty $\frac{94}{100}$ dollars, the amount reported due, together with the sum of dollars, the taxed costs, amounting in the whole to the sum of dollars, and that the libellant have execution thereon to satisfy this decree, unless an appeal be taken thereto by said respondent Wheeler, within the time limited and prescribed by the rules and practice of this court.

SAM'L BLATCHFORD.

BEEBE, DONOHUE & COOKE,
Proctors for Libellants.

(Endorsed:) United States circuit court for the southern district of New York. George Harris & al. vs. Samuel G. Wheeller & al. Beebe Donohue & Cooke, proctors for libel'ts. Final decree on confirmation of commissioner's report and judgment. Filed and entered the 11th day of May, 1868. Docketed judgment May 12th, 1868.

57 U. S. district court.

GEORGE HARRIS, &C.,
vs.
SAMUEL G. WHEELER, JR., IMPL'D.

Docket fee					$20 00
" " on ref					20 00
17 depositions taken & heard					42 00
					82 50
		Paid issue pro		6 00	
	4 50	notes issue		6 00	
Ass.	20 00	2 wit's, 100 miles		20 00	
Ass.	9 00	" " attending 8 days		12 00	
Less.	6 00	" " " 6 "		9 00	
Less.	4 50	17 wit's, 1 day each		25 50	
		Notary's fees		34 00	
		Paid copy report		1 00	
		" " decree		1 00	
		" " " final		1 00	
					115 50
	$44 00				$198 00
					44 00

	$154 00
Clerk	19 50
Comm	63 75
Marshal	15 75
	$252 00

Taxed at two hundred and fifty-two dollars.

58 Appeal items noted. May 18th, 1868.

GEO. F. BETTS, *Clerk.*

Taxation affirmed under the fee bill act of 1853. A prevailing party in such case may recover as part of his costs for interest fees actually paid by him to others as witnesses.

S. B.

59 District court of the United States for the southern district of New York.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. WHEELER ET AL.

SIR: The defendant intends to appeal from the final decree of the court in this cause.

L. B. BUNNELL.

Dated May 19, 1868.

To GEORGE F. BETTS, Esq., *Clerk.*

(Endorsed:) U. S. district court vs. Samuel G. Wheeler & al. Notice of appeal. L. B. Bunnell, proctor for def't. Filed May 20th, 1868.

60

61 *Bond for costs and damages on appeal.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

SAMUEL G. WHEELER, JR., APPELLANT,
vs.
GEORGE HARRIS, WILLIAM W. HARRIS, & ANdrew J. Howell, appellees.

Know all men by these presents that we, Samuel G. Wheeler, jr., and Charles A. Meigs, are held and firmly bound unto the above-named Geo. Harris, W'm W. Harris, & A. J. Howell, in the sum of ten thousand dollars, to be paid to the said George Harris et al., for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named Samuel G. Wheeler, jr., hath prosecuted

his appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that, if the above-named Samuel G. Wheeler, jr., shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. J. WHEELER, JR. [L. S.]
CHA'S A. MEIGS. [L. S.]

Sealed and delivered, and taken and acknowledged, this first day of June, 1868, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

62 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel G. Wheeler, jr., and Charles A. Meigs, being each duly & severally sworn, doth depose and say that they are freeholders in the State of New York; that they are worth the sum of fifteen thousand dollars, each, over and above all their just debts and liabilities.

S. G. WHEELER, JR.
CHA'S A. MEIGS.

Sworn to this first day of June, A. D. 1868, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

(Indorsed:) Vol. 20, page 548. U. S. circuit court. Samuel G. Wheeler, appellant, vs. George Harris, William W. Harris, & Andrew J. Howell. Bond for costs and damages on appeal. L. B. Bunnell, proctor for appellant. Filed this 2d day of June, 1868.

63 Circuit court of the United States for the southern district of New York.

SAMUEL G. WHEELER, JR., APPELLANT,
vs.
GEORGE HARRIS, W'M W. HARRIS, & ANDREW J. Howell, appellees.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named appellant respectfully shows: That, on or about the 9th day of March, 1867, the above-named libellants, George Harris, William W. Harris, and Andrew J. Howell, exhibited their libel in the district of New York, against Samuel G. Wheeler, jr., and Starbuck, claiming over fifty dollars, and praying, among other things, for the reasons set forth in said libel, that said Samuel G. Wheeler, jr., and Starbuck, might be adjudged to pay the demands of said libellants, and costs in said libel mentioned.

That process issued out of said court, and property belonging
64 to said Samuel G. Wheeler, jr., having been attached under and by virtue of said process, said Samuel G. Wheeler did, on or about

the 24th day of April, 1867, file his answer to the said libel, praying that said libel be dismissed with his proper costs in that behalf, as by reference to said libel and the said answer, may more fully appear.

That said cause came on to be heard before the Honorable Samuel Blatchford, judge of said district court, on or about the 20th day of January, 1868, when, by consent of the respective parties, it was referred to George F. Betts, esq'r., to take proof of and commute the amount due to the libellants, with liberty to the defendant to offer such proof and make such defence as he might be advised, as by reference thereto had may more fully appear; under which order or decree a reference was had to said George F. Betts, esq., U. S. commissioner, who reported that the damages sustained by said libellants, amounted to $4,152 94, which report was, on the 13th day of May, 1868, confirmed by the said court, by the final decree thereof.

65 And this appellant is advised and insists that the said decree is erroneous, inasmuch as the said libellants were not entitled to the damages claimed in the premises.

And this appellant, for these and other reasons, appeals from the whole of said decree in favor of George Harris, W'm M. Harris, & Andrew J. Howell, to the next circuit court, to be held in said district, and on said appeal he intends to make new allegations in the circuit court, and introduce the same, and new and further proofs.

And he prays that the records and proceedings may be returned to the circuit court, and that the said decree may be reversed, or such other decree therein be made as to the said circuit court shall seem just, and that the appellees may be condemned to pay the appellant his costs and damages in the premises.

L. B. BUNNELL,
Proctor for Appellant.

66 U. S. circuit court.

SAMUEL G. WHEELER, JR.,
vs.
GEORGE HARRIS, WILLIAM W. HARRIS, & Andrew J. Howell.

STATE OF NEW YORK,
City & County of New York, ss:

L. B. Bunnell, being duly sworn, says that, on the 2d day of June, 1868, he served the annexed notice of appeal on Messrs. Beebe, Donohue & Cook, proctors for the appellees, by delivering a true copy thereof to, and leaving the same with, a person in charge of their office, No 74 Wall st., in the city of New York.

L. B. BUNNELL.

Sworn to before me this 2d day of June, 1868.
GEORGE GALLAGHER,
Notary Public N. Y. Co.

(Endorsed:) 20—548. U. S. circuit court. Samuel G. Wheeler, jr., appellant, vs. George Harris, et al., appellees. Petition of appeal. L. B. Bunnell, proctor for appell't. Filed June 2d, 1868.

67 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second

circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the second day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

GEORGE HARRIS ET AL.
vs.
SAMUEL G. WHEELER & AL.

The appeal from the district court in this case coming on to be heard—
Mr. C. Donohue argues on behalf of appellee;
Mr. L. Bunnell argues on behalf of appellants. C. A. V.

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69 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the nineteenth day of March, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

GEORGE HARRIS ET AL., LIBELLANTS & APPELLEES,
vs.
SAMUEL G. WHEELER, JR., APPELLANT, &C.

This cause coming on to be heard on the appeal herein taken by Samuel G. Wheeler, jr., after hearing L. Bunnell, esq., for the appellant, and Charles Donohue, esq., for the appellee, and due deliberation being had, it is now ordered, adjudged, and decreed that the judgment herein be affirmed, with costs to be taxed.

(Signed) L. B. WOODRUFF.

70

71 U. S. Supreme Court.

GEORGE HARRIS, WILLIAM H. HARRIS, & ANDREW J. HOWELL, libellants & appellees,
vs.
SAMUEL G. WHEELER, JR., AND ——— STARBUCK, respondents & appellants.

To the honorable the Supreme Court of the United States:

The appeal of Samuel G. Wheeler, jr., respondent and appellant, respectfully shows:

That, on or about the 9th day of March, 1867, the above-named libellants and appellees filed their libel in the district court of the United States for the southern district of New York, against the above-named respondent and appellant, in a cause, civil and maritime, for the recovery of an alleged unpaid balance for advances and commissions.

That the respondent and appellant, Samuel G. Wheeler, jr., duly appeared in said cause and filed his answer to said libel, praying that the same might be dismissed, and such proceedings were thereupon had that, by a final decree made and pronounced by the said district court

on the 16th day of May, 1868, it was ordered, adjudged, and de-
72 creed that the libellants recover of the respondent the sum of forty-three hundred and ninety-two $\frac{24}{100}$ dollars.

That, thereafter, the said respondent and appellant duly appealed from such final decree to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said court.

That said cause was in said court, and such proceedings were thereupon had in the said circuit court, that afterwards, on the 9th day of May, 1870, the said circuit court made a final decree in said cause, whereby it was ordered, adjudged, and decreed that the said decree of the district court be affirmed, and that the libellants, appellees, recover against the respondent the sum of five thousand and thirty-three $\frac{53}{100}$ dollars, and that they have execution therefor, according to law and the course and practice of said court.

And this appellant is advised that this decree is erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the circuit court, and the libel, answer, depositions, evidence, and all proceedings in the said cause, may be sent to the Supreme Court of the United States without
73 delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree made as to the said Supreme Court shall seem just.

S. G. WHEELER, JR.,
Appellant.

L. B. BUNNELL,
Proctor for Respondent and Appellant.

(Endorsed:) U. S. circuit court. George Harris et al. vs. Samuel G. Wheeler. Petition of appeal. L. B. Bunnell, proctor for appellant. Filed May 19, 1870.

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75 Supreme Court of the United States of America.

GEORGE HARRIS, WILLIAM W. HARRIS, & ANDREW J. HOWELL
vs.
SAMUEL G. WHEELER, JR.
} Bond for costs.

Know all men by these presents that we, Loyal S. Pond and George M. Wheeler, are held and firmly bound unto the above-named Geo. Harris, William Harris, & A. J. Howell in the sum of twelve thousand dollars, to be paid to the said Harris & Howell, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the 18th day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Samuel G. Wheeler, jr., has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree

and judgment rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that, if the above-named Samuel G. Wheeler, jr., shall prosecute his said appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LOYAL S. POND. [L. S.]
GEO. M. WHEELER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 18th day of May, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

76 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Loyal S. Pond & G. M. Wheeler, being duly sworn, depose and say, & each for himself says, that he is worth the sum of twelve thousand dollars, over and above all his just debts and liabilities.

LOYAL S. POND.
GEO. M. WHEELER.

Sworn to this eighteenth day of May, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

Bond approved as sufficient.

L. B. WOODRUFF,
Circuit Judge.

(Indorsed:) Vol. —, page —. U. S. circuit court. George Harris et al. vs. Samuel G. Wheeler. Bond for costs on . ——— ———, proctor. Filed this 19th day of May, 1870.

77 By the Honorable L. B. Woodruff, judge of the circuit court of the United States for the southern district of New York, second circuit, to George Harris, William Harris, and Andrew J. Howell:

Whereas, Samuel G. Wheeler, jr., has lately appealed to the Supreme Court of the United States, from the whole and every part of a decree lately rendered in the circuit court of the United States for the southern district of New York, in favor of you, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, in the District of Columbia, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and seal at the city of New York, in the southern district of New York, in the second circuit, on the 19th day of May, in the year one thousand and eight hundred and seventy, and of the independence of the United States the ninety-fourth.

SAM'L BLATCHFORD.

78 COUNTY OF NEW YORK, *ss:*

James Skidmore, being duly sworn, says that, on the 19th day of May, 1870, he served the within citation Beebe, Donohue & Cooke, proctors for Harris, Harris & Howell, by delivering to and leaving a true copy with some competent person in charge of their office, No. 68 Wall st., N. Y.

J. W. SKIDMORE.

Sworn before me this 19th day of May, 1870.

R. E. STILWELL,
U. S. Com'r.

(Endorsed:) U. S. circuit court. George Harris et al. vs. Samuel G., Wheeler, jr. Citation. L. B. Bunnell, proctor for appellant. Filed May 19, 1870.

(Indorsement on cover:) No. 403. Samuel G. Wheeler, jr., appellant, vs. George Harris, W'm Harris and Andrew J. Howell. S. New York, C. C. U. S. Filed 14th December, 1870.